

## Statement of Circumstances – Justification for the Requested Variance

Santa Clara County Planning Office  
70 W. Hedding Street, 7<sup>th</sup> Floor, East Wing  
San Jos, CA 95110

Re: Property: 2133 Santa Cruz Avenue, Santa Clara, CA 95051  
Issue: Variance – 20 ft. setback of rear lot

Dear Commissioner:

Thank you for reviewing our application for Variance to our single-story addition of 426 square feet to our existing home of 1078 square feet. At issue is an approximately 8 square foot area of the addition, to our side lot. Currently, this 8 square foot area of the addition would be in violation of the 20-foot rear lot setback requirements.

**Variance Application Request:** We humbly request that the Zoning Administrator grant our application for Variance for an approximately 8 square foot area of our single-story addition to our side lot, despite its violation of the 20-foot rear setback requirements.

In this case, variance should be granted under § 5.65.020 because [1] special circumstances exist, notably, all 37 homes on Santa Cruz Avenue, all 42 homes on San Rafael Avenue, and all 32 homes on Ventura Place are on lots of less than 6000 sq. feet lots with rear setbacks of approximately 17 feet 4' inches, less than the 20 feet required by the ordinance; and [2] a grant of a variance permit would not constitute a grant of special privilege because the rear setback is not being changed and will remain consistent with the prevailing patterns found on the street and in the neighborhood because the 8 square foot single story area at issue is being added to the side lot, rather than extending the rear lot. The only reason this side lot addition violates 20-foot setback ordinance is due to the existing lot sizes and home placements, not the proposed addition.

**1. Special Circumstances Applicable to the Property – Size and Location: All Properties on Santa Cruz Avenue and the two neighboring streets have Setbacks of 17'4", less than 20 feet.**

The lot at issue has a setback of 17 feet, 4 inches. With the exception of end lots, all 37 homes on Santa Cruz Avenue and all 74 homes on the two abutting streets of San Rafael Avenue and Ventura place have similar lots of less than 6,000 square feet and rear setbacks of approximately 17 feet, 4 inches, less than the 20 feet required by the zoning ordinance.

For variance to be granted in Santa Clara County, the Zoning Administrator must find that because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

In this case, the current prevailing rear set back distances in the neighborhood constitute a special circumstance by which the Zoning Administrator should find that a special circumstance exists to justify a variance. Given that all rear setbacks on Santa Cruz Avenue and the two abutting streets are less than 20 feet, any additions to the side lot would automatically violate the rear setback zoning ordinance without changing the rear setback distance, which is exactly the case here. The property at issue is not changing the rear setback distance of the home. The single-story addition will retain a rear setback distance of 17'4".

In addition to the fact that the rear setback is not changing, special circumstances exist regarding the size of the requested variance. Here, the variance requested is for an area which is less than 10 square feet in total size. Although we understand that the Planning Office is not amenable to arguments alleging variance should be granted due to the minor nature of the variance, the Applicant is concerned that a 4 feet by 2'9" foot cut out, on the corner of a single story structure would be unsightly and inconsistent with the prevailing patterns found on the street and on neighboring streets in the neighborhood. Whereby, other single-story structures generally meet at a corner, rather than having an indented corner. We understand this may not be the case for a two-story remodel, which may necessitate further rear setback for the second story. However, where the Applicant is requesting a variance to a single-story structure, the prevailing pattern is for the homes to be rectangular in shape at the rear of the home.

## **2. A Grant of Variance would Not Constitute a Grant of Special Privilege -**

For variance to be granted in Santa Clara County, the Zoning Administrator must find that the grant of a variance permit would not constitute a grant of special privilege inconsistent with the limitation upon other properties in the vicinity and zone in which subject property is situated.

In this case, the location and orientation of the addition to the new home on the lot will be consistent with the prevailing patterns found in the neighborhood. Moreover, the front, side and rear yard setbacks will continue to match and NOT extend beyond that which is typical for the block and appropriate for the scale of the proposed building. As discussed earlier, the 17'4" setback, which is prevailing in the neighborhood, will remain the same for the home addition.

Furthermore, a grant of variance will not constitute a grant of special privilege because the 8 square foot area at issue will not effect that fact that the single-story addition will remain well under the 40% total lot size allowable under the zoning ordinance. Under the zoning ordinance, all structures on lot sizes of less than 6,000 feet must not make up more than 40% of all space on the lot. In this case, even if the variance is granted, the home will only occupy 30% of the total lot size. This 30% occupancy of the single-story structure is well within the zoning requirement

and much more modest than many other homes on Santa Clara Avenue and abutting streets which occupy nearly 40% of the lot size with more imposing two-story structures.

### 3. **Other Considerations**

Although we understand the Zoning Administrator is not amenable to arguments regarding practicality, aesthetics, profitability or convenience, we would be remiss to not mention that a denial of our Application for Variance would force us to eliminate a large rear window of current design because the wall would need to move three feet while retaining room for a bathroom and closet. Currently, one of our favorite features of our home is a rear window in this location where we can see our rose bushes and watch the sunrise. Certainly, we could have avoided this issue by attempting to renew our prior two-story remodel application which was granted. However, we were hoping to retain the homes' charm while also keeping our family on a single-story. A grant of variance would mean a lot to us and help us meet this goal.

### **Conclusion**

We humbly request that you grant our Application for Variance, regarding an 8 square foot area of our single-story addition to our side-lot which currently violates the 20-foot rear setback requirements.

Thank you for your prompt attention to this matter. Please contact me if you have any questions.

Very truly yours,

Devin & Nicole Bissman